BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation Provisions	)	CC Docket 96-128
of the Telecommunications Act of 1996	)	
	)	
Florida Public Telecommunications Association	)	
Inc. Petition for Declaratory Ruling and Order of	)	
Preemption	)	

COMMENTS OF THE
ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION

The Illinois Public Telecommunications Association ("IPTA") submits that the Florida Public Telecommunications Association, Inc. ("FPTA") petition for a declaratory ruling and order of preemption to enforce the Commission's orders implementing Section 276 of the Telecommunications Act of 1996 ("Federal Act") highlights the increasing need for the Commission's declaratory ruling on the implementation and enforcement of the Commission's *Payphone Orders*[1]and *Wisconsin Order*.[2] The IPTA urges the Commission to take this opportunity to move on the pending petitions for a declaratory ruling on this matter before any more time passes, endangering the very rights that this Commission has repeatedly found to be due to payphone service providers under the Federal Act.

[1] *In the matter of the Implementation of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Report and Order, 11 FCC Rcd. 20541, ¶¶146-147 (1996) ("*First Payphone Order")*, and Order on Reconsideration, 11 FCC Rcd. 21233 (1996), ¶¶131, 163 ("*Payphone Reconsideration Order") aff'd in part and remanded in part sub nom. Illinois Pubic Telecommunications Assn. v. FCC,* 117 F.3d 555 (D.C. Cir. 1997) *clarified on rehearing* 123 F.3d 693 (D.C. Cir. 1997) *cert. den. sub nom. Virginia State Corp. Com'n. v. FCC,* 523 U.S. 1046 (1998); Order, DA 97-678, 12 FCC Rcd. 20997, ¶¶ 2, 30-33, 35 (Com. Car. Bur. released April 4, 1997) ("*Bureau Waiver Order*"); Order, DA 97-805, 12 FCC Rcd. 21370, ¶ 10 (Com. Car. Bur. released April 15, 1997) ("*Bureau Clarification Order*") (collectively *"Payphone Orders"*).

[2] *In the Matter of Wisconsin Public Service Commission: Order Directing Filings*, Bureau/CPD No. 00-01, Memorandum Opinion and Order, FCC 02-25, 17 FCC Rcd. 2051, ¶ 31 (Jan. 31, 2002)("*Wisconsin Order*") *aff'd sub nom. New England Public Communications Council, Inc. v. FCC,* 334 F.3d 69 rehearing and rehearing en banc denied (Sep. 22, 2003).

The Commission held that states must implement the federal requirement for cost-based rates that comply with the new services test by no later than April 15, 1997 and specifically preempted any inconsistent state requirement.[3] The Commission also found that because incumbent local exchange carriers had an incentive to charge their competing payphone providers unreasonably high prices for network services, the Commission expressly conditioned the incumbent local exchange carriers' eligibility for receipt of dial around compensation on their actual compliance with the cost-based rate requirement.[4] Although the carriers could self-certify their compliance with the new services test to begin receiving dial around compensation, and other carriers were not free to reject this self-certification, the Commission emphasized that only actual compliance would satisfy the eligibility requirement. However, the determination of actual compliance was a matter to be determined solely by the Commission or a state commission.[5]

The Commission now has a number of pending requests for a declaratory ruling on the implementation of the *Payphone Orders* and the *Wisconsin Order.*[6] Rather than reiterate the comments filed by the IPTA in these proceedings, the IPTA incorporates them herein by reference. However, in addition to these petitions, the Supreme Judicial Court of the State of Massachusetts recently indicated that it is referring similar questions to the Commission for guidance, with a court deadline of August 18, 2006. The Oregon Public Utilities Commission

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[3] *First Payphone Order*, ¶ 147; *Payphone Reconsideration Order*, ¶ 163. *See also Wisconsin Order*, ¶¶ 15, 42, 49-51.

[4] *Payphone Reconsideration Order*, ¶¶ 130-131,163; *Bureau Waiver Order*, ¶¶ 30-31, 33; *Bureau Clarification Order*, ¶ 10.

[5] *Bell-Atlantic v. Frontier Communications Services*, DA 99-1971, ¶ 28 (Com. Car. Bur. Released September 24, 1999).

[6] *The Illinois Public Telecommunications Association's Petition for A Declaratory Ruling Regarding the Remedies Available for Violations of the Commission's Payphone Orders*, Public Notice, DA 04-2487, issued August 6, 2004 ("IPTA Petition"); *The Southern Public Communications Association's Petition for A Declaratory Ruling Regarding the Remedies Available for Violations of the Commission's Payphone Orders*, Public Notice, DA 04-3653, issued November 19, 2004 ("SPCA Petition"); and *Petition of the Independent Payphone Association of New York, Inc. to Pre-empt Determinations of the State of New York Refusing to Implement the Commission's Payphone Orders, and For a Declaratory Ruling*, Public Notice, DA 05-49, issued January 7, 2005.

likewise is holding in abeyance a proceeding for the refund of charges found to be in excess of the Commission's cost-based rate requirements under the new services test. The Oregon PUC is awaiting the Commission's action on the pending requests for a declaratory ruling. Numerous states are awaiting guidance from the Commission on a matter of utmost importance to payphone providers.

Meanwhile, the IPTA continues to pursue its remedies in state court proceedings while awaiting the Commission's action on its petition. But time is running out. Although the IPTA pursued enforcement of the Commission's *Payphone Orders* from the outset, filing its petition before the Illinois Commerce Commission ("Illinois Commission") on May 8, 1997, shortly after the Commission's April 15, 1997 deadline for compliance with the cost-based rate requirements, and although the IPTA petition requested the Illinois Commission both to require the enforcement of the new services test rate requirements and to order refunds of all excessive charges since April 15, 1997, and although the Illinois Commission found that the incumbent local exchange carriers' rates did not comply with the Commission's new services test requirements, the Illinois Commission denied any refunds of the charges paid by payphone providers that exceeded this Commission's cost-based rate requirements, [7] even though the Commission's own orders repeatedly *emphasized* that *actual* compliance must occur *no later than* April 15, 1997.

Furthermore, the Illinois Commission has refused to implement the Commission's other requirement, that incumbent local exchange carriers would not be eligible to receive dial around compensation for their payphones in any state until the carrier was in *actual* compliance with the cost-based rate requirement. The extensive record in the Illinois proceeding undisputedly

[7] *Illinois Commerce Commission. On its Own Motion Investigation into Certain Payphone Issues as Directed in Docket 97-0225*, ICC Docket No. 98-0195, Interim Order, (November 12, 2003).

established that the incumbent local exchange carriers received hundreds of millions of dollars of dial around compensation for their payphones since April 15, 1997 based on their false certifications that they were in compliance with the Commission's new services test. Despite the Commission's insistence that the self-certification would not substitute for actual compliance, and that it was a matter to be left to the state jurisdiction and the Commission to enforce, these Commission orders have received no effect.

The IPTA proceeded just as the Commission directed. It filed a petition for proceedings before the Illinois Commission to enforce the Commission's *Payphone Orders* within a month of the April 15, 1997 due date. This petition expressly sought not only implementation of cost-based rates, but also a refund of any excessive charges after the April 15, 1997 deadline. An extensive evidentiary record was built regarding the underlying costs of the network services along the Commission's guidelines, and establishing that the carriers were receiving hundreds of millions of dollars based on their false certifications of compliance with the new services test. At the conclusion of the hearing, the Illinois Commission conclusively found that the rates did not comply with the new services test. Yet, the Illinois Commission did not implement either the Commission's requirement that the cost-based rates be effective no later than April 15, 1997 or the Commission's holding that the carriers were not eligible for receipt of dial around compensation before their rates to payphone providers were in actual compliance with the new services test.

While awaiting the Commission's decision on the IPTA's Petition for a Declaratory Ruling, the Illinois Appellate Court recently addressed the appeal of the Illinois Commission order. Although the Illinois requirements authorizing non-cost-based rates were found to permit rates that exceeded the Commission's cost-based rate requirements, the Appellate Court held that

the Illinois requirements remained in effect until November 12, 2003, when the Illinois Commission implemented the federal requirements. No recognition was given either to the Commission's express orders that new service test rates must be effective no later than April 15, 1997, or to the Commission's express orders that all inconsistent state requirements had been preempted. Furthermore, although the Commission also established compliance with new services test rates as a requirement for incumbent carriers' eligibility for dial around compensation, expressly for the purpose of enforcing the payphone providers' rights under the *Payphone Orders*, the Appellate Court held that payphone providers have no standing to even raise this issue.[8] So, despite irrefutable record evidence of blatant violations of the Commission's numerous orders, these orders have become meaningless in actual implementation.

As previously noted, time is running out. The Illinois proceedings are now before the Illinois Supreme Court on a Petition for Leave to Appeal. The Oregon PUC is awaiting guidance from the Commission, as is the Massachusetts Supreme Judicial Court. The Commission needs to act now by issuing a declaratory ruling to implement the very orders in which the Commission emphasized that it would require actual compliance. At stake are not only the federal rights of the numerous payphone providers that the Commission labored so long to ensure, but the credibility and substance of the Commission's own orders.

After extensive proceedings to develop the requirements of section 276, the Commission established a clear policy that required cost-based rates no later than April 15, 1997, and further that, to enforce this requirement, incumbent carriers would not be eligible for dial around compensation until they were in actual compliance. If the Commission does not proceed now on this and the other pending petitions, those orders will go for naught, to the detriment of numerous

[8] See Attachment A, a copy of the Illinois Appellate Court Order.

payphone providers in various states that have relied upon the Commission for enforcement of their federal rights.

CONCLUSION

For the reasons stated above, and for those stated in the IPTA Petition, the Illinois Public Telecommunications Association respectfully submits that the Commission should grant the Florida Public Telecommunications Association's Petition and proceed to issue a declaratory ruling on that petition and the other petitions pending before the Commission.

/s/
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February 28, 2006

Attachment A

FIFTH DIVISION
November 23, 2005

No. 1-04-0225

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION, Petitioner-Appellant, v. ILLINOIS COMMERCE COMMISSION, ILLINOIS BELL TELEPHONE COMPANY d/b/a SBC ILLINOIS, VERIZON NORTH, INC., and VERIZON SOUTH, INC., Respondents-Appellees.	)	Petition for Review of the Orders of the Illinois Commerce Commission. No. 98-0195

ORDER

This appeal involves the tariff rates SBC Illinois and Verizon North, Inc. and Verizon South, Inc. (Verizon) charge when they provide telecommunications services to unaffiliated, independent providers of payphone services. The Illinois Public Telecommunications Association (the IPTA), a trade association representing the interests of independent payphone providers, filed a petition with the Illinois Commerce Commission (ICC) contending that SBC Illinois and Verizon charged excessively high tariff rates and that they should refund the excess charges. The IPTA further contended that Verizon gave itself an unfair competitive advantage by failing to charge itself certain costs that it charged to competing payphone providers. The ICC ruled that:

(1) SBC Illinois and Verizon were not required to refund any excess charges; and (2) Verizon did not give itself an unfair competitive advantage by certain costs it charged to competing payphone providers. The IPTA appeals. We affirm.

Independent payphone providers (IPPs) subscribe to telecommunication services from SBC Illinois and Verizon that are functionally equivalent to the services used by other retail business customers, except for some unique screening and blocking functions required to control fraudulent use of payphones. Therefore, prior to the ICC's order in this proceeding, telecommunication services were offered to IPPs at rates based on retail business rates. The ICC approved Verizon's IPP rates in 1994. See GTE North Incorporated: Proposed Filing to Restructure and Consolidate the Local Exchange, Toll and Access Tariffs with the Tariffs of the Former Contel of Illinois, Inc., docket nos. 93-0301 & 94-0041 (cons.) (October 11, 1994) (the 1994 Payphone Order.) The ICC authorized modifications in Verizon's rates in January 1997.

The ICC has twice approved SBC Illinois' IPP rates at levels equivalent to its retail business rates. First, in commission docket nos. 84-0464 & 84-0442 (cons.), SBC Illinois proposed, and the ICC approved, IPP rates based on the rates for retail business services. See Illinois Bell Telephone Company Proposed Rates, Rules and Regulations for Customer Provided Pay Telephone Service, Ill. C.C. docket nos. 84-0464 & 84-0442 (cons.) (April 24, 1985) (the 1985 Payphone Order.) In commission docket no. 88-0412, SBC Illinois, the IPTA, and the ICC agreed that IPP rates would remain equivalent to retail business rates, with the exception of a discounted usage rate schedule, through June 30, 2005. See Independent Coin Payphone Association and Total Communication Services, Inc., Ill. C.C. docket no. 88-0412 (June 7, 1995)

(the 1995 Payphone Order.)

Eight months after the ICC entered the 1995 Payphone Order, Congress enacted section 276 of the Telecommunications Act of 1934. 47 U.S.C. §276 (1996). Section 276 establishes certain national standards governing the payphone industry. The Federal Communications Commission (FCC) promulgated rules to implement section 276, and required "incumbent local exchange carriers", such as SBC Illinois and Verizon, to comply with the so-called "new services test" for setting IPP rates. The FCC's new services test is a cost-based test that sets the direct cost of providing a new service as a price floor and then adds a reasonable amount of overhead to derive the overall price of the service.

The FCC ordered incumbent local exchange carriers to file IPP service tariffs with their state commissions, but only if those services were not already tariffed. The FCC required incumbent local exchange carriers that already had effective tariffs on file to provide their state commissions with documentation demonstrating compliance with the FCC's pricing policy. On May 15, 1997, SBC Illinois filed with the ICC the additional cost documentation required by the FCC and self-certified that its existing tariffed rates for IPP services satisfied the FCC's new services test for cost-based rates under section 276.

Similarly, in May 1997, Verizon self-certified, with three amendments, that its existing tariffed rates for IPP services satisfied the FCC's new services test for cost-based rates under section 276.

On May 8, 1997, the IPTA filed a petition requesting that the ICC investigate Illinois' incumbent local exchange carriers' compliance with section 276. In an order dated December 17,

1997, the ICC directed that it would investigate SBC Illinois' and Verizon's rates for compliance with the FCC's new services test. The ICC also required SBC Illinois and Verizon to show that they were satisfying the so-called "imputation" test set forth in the Public Utilities Act. 220 ILCS 5/13-505.1 (West 2002). Under the imputation test, incumbent local exchange carriers, such as SBC Illinois and Verizon, are required to charge themselves certain costs (at the premium tariffed rate) that they charge to competing payphone providers. The imputation test is designed to enhance competition; in the absence of such a test, the incumbent local exchange carriers would have every incentive to charge payphone competitors excessive rates and drive them out of business.

Hearings were held, testimony was taken, and evidence was presented into the record. At the conclusion of the hearings, and while the parties were briefing the issues, the FCC amended its earlier orders and held that the new services test requirement under section 276 applied only to Bell Operating Companies. As such, Verizon was not subject to the new services test under section 276. However, the FCC found that state commissions may require non-Bell incumbent local exchange carriers, such as Verizon, to comply with the new services test under state authority.

The ICC ordered a new round of hearings to address these matters. After these hearings and briefings, the ICC found that Verizon's rates for IPP services must comply with the FCC's new services test on state grounds. The ICC further found that neither SBC Illinois nor Verizon met the FCC's new services test. The ICC ordered reductions in both SBC Illinois' and Verizon's rates and it directed SBC Illinois and Verizon to file new tariff rates that complied with the new

services test.

However, the ICC denied the IPTA's request for refunds, ruling that the refund claim was barred by the prohibition against retroactive ratemaking.

The ICC then addressed whether SBC Illinois and Verizon met the imputation test. The parties agreed that SBC Illinois met the imputation test. Relevant to this appeal, the ICC also found that Verizon met the imputation test for the following services: primary interexchange carrier, answer supervision, call screening and blocking.

The IPTA appeals, contending that the ICC erred by: (1) denying its request for refunds of the difference between SBC Illinois' and Verizon's new rates and the rates the ICC had previously authorized; and (2) finding that Verizon met the imputation test for primary interexchange carrier, answer supervision, call screening and blocking.

I. Standard of review

The ICC is the administrative agency responsible for setting rates that public utilities may charge their customers. United Cities Gas Co. v. Illinois Commerce Commission, 163 Ill. 2d 1, 11 (1994). It is governed by the Public Utilities Act, in which the legislature has enunciated the ICC's powers and duties. United Cities, 163 Ill. 2d at 11. The ICC is the fact-finding body in the ratemaking process. On appeal from an order of the ICC, its findings of fact are considered prima facie true; its orders are considered prima facie reasonable; and the burden of proof on all issues raised in an appeal is on the appellant. United Cities, 163 Ill. 2d at 11.

An order of the ICC will be reversed only if it is outside the jurisdiction of the ICC or is not supported by substantial evidence, or if the proceedings or manner in which the order was

arrived at violated the State or Federal constitution or relevant laws, to the prejudice of the appellant. United Cities, 163 Ill. 2d at 12. Apart from examining whether the ICC acted outside the scope of its constitutional or statutory authority, the reviewing court is limited to determining whether the ICC's factual findings are against the manifest weight of the evidence. United Cities, 163 Ill. 2d at 12. However, the ICC's interpretation of a question of law is not binding on the court of review. United Cities, 163 Ill. 2d at 12.

II. The ICC's denial of the IPTA's request for refunds

As discussed above, Congress enacted section 276 of the Telecommunications Act of 1934, establishing national standards governing the payphone industry. The FCC promulgated rules to implement section 276, establishing a "new services test" which in effect required incumbent local exchange carriers to provide services to competing payphone providers at cost-based rates by April 15, 1997. Both SBC Illinois and Verizon self-certified that they were in compliance with the new services test; however, on November 12, 2003, the ICC found that neither SBC Illinois nor Verizon were in compliance with the new services test and the ICC ordered reductions in their rates. The ICC denied the IPTA's request for refunds of the excess charges since April 15, 1997, holding that such refunds would violate the prohibition against retroactive ratemaking.

The IPTA contends that the ICC erred by denying its request for refunds of the excess charges since April 15, 1997. Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co., 284 U.S. 370, 76 L. Ed. 348, 52 S. Ct. 183 (1932) and Mandel Brothers, Inc. v. Chicago Tunnel Terminal Co., 2 Ill. 2d 205 (1954) are controlling. In Arizona Grocery Co., the United States

Supreme Court held that when the Interstate Commerce Commission declares a specific rate to be the reasonable and lawful rate for the future, it "speaks as the [l]egislature, and its pronouncement has the force of a statute." Arizona Grocery Co., 284 U.S. at 386. The Supreme Court further held that "[w]here the [Interstate Commerce Commission] has upon complaint, and after hearing, declared what is the maximum reasonable rate to be charged by a carrier," the carrier is entitled to rely on that rate for as long as it is in effect and is not required to make reparations if the commission later determines that the declared rate was unreasonable. Arizona Grocery Co., 284 U.S. at 390.

In Mandel Brothers, the Illinois Supreme Court adopted the reasoning of Arizona Grocery Co. Mandel Brothers involved a request by a shipper to recover reparations for allegedly excessive rates charged by a carrier. New, increased rates had taken effect upon the ICC's approval of them, but the increase later was set aside on judicial review. Mandel Brothers, 2 Ill. 2d at 206. The shipper then filed a complaint with the ICC for reparations, seeking reimbursement for its payment of the invalid rates. Mandel Brothers, 2 Ill. 2d at 207. In its analysis of the issue, the supreme court distinguished between carrier-made rates (i.e., rates which had become effective without prior regulatory examination and approval) and rates established or approved by a regulatory body. Mandel Brothers, 2 Ill. 2d at 209. The supreme court held that as to carrier-made rates, reparations (refunds) may be awarded if those rates are later found to have been unreasonable. Mandel Brothers, 2 Ill. 2d at 209. As to rates established or approved by a regulatory body, the supreme court held that a subsequent reduction in those rates affords no right of action for a refund of the difference between the old and new rates. Mandel Brothers, 2

Ill. 2d at 209. The supreme court noted that, in the case before it, the "action of the [ICC] in approving the new schedule of rates was legislative in character and prospective in its operation" (Mandel Brothers, 2 Ill. 2d at 210) and therefore that the rate approved by the ICC was the rate which the utility was required to charge as long as the order of the ICC remained in effect. Mandel Brothers, 2 Ill. 2d at 211-12. The supreme court held that it therefore cannot be said that "the utility charged an excessive rate which gave rise to a claim for reparations." Mandel Brothers, 2 Ill. 2d at 212.

Similar to Mandel Brothers, the ICC in the present case approved the rates charged by SBC Illinois and Verizon. See our discussion above concerning the ICC's approval of SBC Illinois' rates in the 1985 and 1995 Payphone Orders, and the ICC's approval of Verizon's rate in the 1994 Payphone Order. Since the rates in question were the subject of regulatory approval, SBC Illinois and Verizon were entitled to rely on those rates for as long as they were in effect, i.e. until November 12, 2003, when the ICC required SBC Illinois and Verizon to reduce their rates in accordance with FCC rules implementing section 276 of the Telecommunications Act of 1934. Since the rates in question were approved by the ICC, the subsequent reduction in those rates in November 2003 affords no right of action for a refund of the difference between the old and new rates.

The IPTA contends, though, that a different outcome is required because section 276 of the Telecommunications Act of 1934 preempted the rates approved by the ICC in the 1985, 1994, and 1995 Payphone Orders and because the FCC required new rates in compliance with section 276 to be filed by April 15, 1997. The IPTA contends that since section 276 preempted the rates

approved in the payphone orders, SBC Illinois and Verizon were not entitled to rely on those rates. The IPTA further contends that since the rates charged by SBC Illinois and Verizon after April 15, 1997, were ultimately found not to have been in compliance with section 276, a refund action may be brought.

The IPTA's argument is unavailing. Section 276(c) merely states: "To the extent that any State requirements are inconsistent with the [FCC's] regulations, the [FCC's] regulations on such matters shall preempt such State requirements." 47 U.S.C. §276(c) (1996). Thus, under section 276, preemption turned on whether the rates at issue here were in compliance with the FCC's regulations. However, Section 276 did not state whether or not the rates approved by the ICC were in compliance with the FCC's regulations, nor did section 276 provide that the FCC would make the determination as to whether the rates approved by the ICC were in compliance; rather, as conceded by the IPTA, the FCC looked to state regulatory commissions to ensure compliance with the FCC's regulations. In other words, the existing rates remained in effect until the ICC determined whether or not they complied with the FCC's regulations. Therefore, as discussed above, SBC Illinois and Verizon were entitled to rely on the rates approved by the ICC, which remained in effect until November 12, 2003; accordingly, the ICC did not err in denying the IPTA's claim for refunds.

III. The ICC's application of the imputation test

As discussed above, the Public Utilities Act sets forth the so-called "imputation test", whereby incumbent local exchange carriers, such as SBC Illinois and Verizon, are required to charge themselves certain costs at the premium tariffed rate that they charge to competing

payphone providers. The IPTA appeals the ICC's finding that Verizon met the imputation requirement for the following services: primary interexchange carrier, answer supervision, call screening and blocking.

A. Primary Interexchange Carrier Charges

A payphone provider may elect to pre-subscribe its phones to an interexchange carrier (IXC), meaning that long-distance calls made from the phones are automatically routed to the subscribed IXC for service. When a phone is pre-subscribed, the primary interexchange carrier charge is assessed directly to the IXC. When a phone is not pre-subscribed, the primary interexchange carrier charge is imposed on the payphone provider.

IPTA witness Gary Pace calculated the primary interexchange carrier charges Verizon should have imputed. Verizon witnesses Steve Olson and Dr. Edward Beauvais testified that Mr. Pace based his calculation under the assumption that all of the payphones in Verizon's operation were not presubscribed. Mr. Olson and Dr. Beauvais testified that, contrary to Mr. Pace's assumption, very few of Verizon's payphones are not presubscribed. Mr. Olson and Dr. Beauvais testified that Verizon was only required to impute the primary interexchange carrier costs for its non-presubscribed phones, which it did. The ICC found Mr. Olson's and Dr. Beauvais' testimony persuasive, and found that Verizon correctly imputed the primary interexchange carrier charges. The ICC's factual findings are not against the manifest weight of the evidence; therefore, we affirm the ICC's finding that Verizon correctly imputed the primary interexchange carrier charges.

B. Answer supervision, call screening and blocking

Verizon's intrastate payphone rates consist of two line rates and four rates for ancillary

services or features. The two line rates are: (1)Customer Owned Coin Telephone (COCOT) service; and (2) Customer Owned Pay Telephone (COPT) service. The four ancillary features are: (1) answer supervision; (2) billed number screening; (3) 900 and international blocking; and (4) selective class of call screening.

COCOT service is the provision of a basic line and dial tone. The service provides no access to ancillary features. To obtain the ancillary features, payphone providers using the COCOT service must connect a certain type of payphone, called a "smart" phone, that has the capability to internally generate the ancillary features.

COPT service is a telephone line that not only provides a dial tone but also accesses the intelligence of Verizon's central office to provide the ancillary features. Because the line itself offers this capability, the "smart" payphone is not required, and the payphone connected to the line is commonly referred to as a "dumb" payphone.

Thus, answer supervision, call screening and blocking are ancillary features that payphone providers only need to purchase when they elect to use dumb payphones. Because dumb payphones do not have the capability to provide ancillary features, the providers rely on the intelligence of Verizon's central office to provide those features. Smart payphones are capable of providing the ancillary features independently, and payphone providers can avoid charges for ancillary features by electing to use smart phones.

Mr. Pace testified for the IPTA that the costs associated with answer supervision, call screening and blocking should be imputed for all Verizon payphones without regard to whether the phones are smart or dumb. Dr. Beauvais rebutted Mr. Pace by explaining that ancillary

features are only purchased when dumb payphones are utilized, and Dr. Beauvais and Mr. Olson testified that Verizon correctly imputed the charges for the ancillary features for the number of its payphones that are dumb phones. The ICC found Dr. Beauvais' and Mr. Olson's testimony persuasive and found that Verizon correctly imputed the charges for the ancillary features. The ICC's factual findings are not against the manifest weight of the evidence. Accordingly, we affirm.

IV. Dial around compensation

The FCC ruled that once SBC Illinois and Verizon complied with the new services test, they could recover "dial-around compensation" from interexchange carriers for such carriers' completed access code and toll free calls that originate on the payphone providers' payphones. As discussed, SBC Illinois and Verizon self-certified that they were in compliance with the new services test; subsequently, SBC Illinois and Verizon received dial around compensation from interexchange carriers.

The IPTA contends that SBC Illinois and Verizon should not have received dial around compensation, as they were never in compliance with the FCC's new services test. The IPTA lacks standing to raise this issue. Standing requires some injury to a legally cognizable interest. Glisson v. City of Marion, 188 Ill. 2d 211, 221 (1999). The claimed injury must be: (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. Glisson, 188 Ill. 2d at 221.

The IPTA (and its members) did not pay the dial around compensation; those payments were made by interexchange carriers who are not parties to this appeal. The IPTA therefore

suffered no injury that would be redressed by the return of the dial around compensation to the interexchange carriers; accordingly, the IPTA lacks standing to raise this issue on appeal.

For the foregoing reasons, we affirm the ICC. As a result of our disposition of this case, we need not address the other arguments on appeal.

Affirmed.

O'BRIEN, J., with GALLAGHER, P.J., and NEVILLE, J., concurring.